

REMARKS

Claims 1-4, 8-12, 19-45, 47-56, 59, and 68-74 are currently pending. Reconsideration of the present application in view of the remarks that follow is respectfully requested.

Claim Rejections**Claim Rejections Under 35 U.S.C. § 112**

Claims 1-4, 8-12, 19-45, 47-56, 59, and 68-74 were rejected under 35 U.S.C. § 112, second paragraph, as being vague and indefinite for failing to particularly point out distinctly claim the subject matter which Applicant regards as the invention. In support of this ground of rejection, the Office Action states, on page 2, that “[a]s currently claimed by the applicant has not positively claimed how to [sic] common services provided by private easements are differentiated from common services provided by municipalities.” It is unclear to the Applicant what issue the Examiner has with the claim language. The Applicant respectfully submits that claim 1 includes the feature of separating private easements for the provision of common services from dedicated public rights-of-way and claim 71 includes the feature of segregating private easements from dedicated public rights-of-way. The claims simply do not require separating common services provided by the municipalities from common services provided by the one or more decision making authorities/access entities. For at least these reasons, withdrawal of this ground of rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. § 103

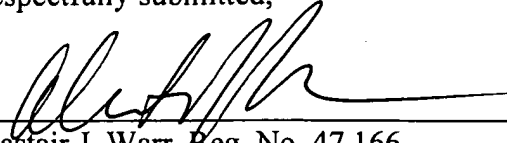
Claims 1-4, 8-12, 19-45, 47-56, 59, and 68-74 under 35 U.S.C. § 103(a) as being unpatentable over an article by Duffy Hayes titled “Building A Better Provider” (hereinafter “Hayes” in view of information retrieved from the Metropolitan Regional Information Systems, Inc. (hereinafter, “MRIS”).

Grounds of rejection asserted against claims 1-4, 8-12, 19-45, 47-56, 59, and 68-74 of the present application are based on the combination of Hayes and MRIS, which are being asserted to support the § 103 rejection. The Declaration enclosed herewith is submitted in accordance with 37 C.F.R. § 1.131. It is unclear to the Applicant's what date is the actual the publication date of the Hayes reference, which the Examiner indicated to be September 1, 2000. However, it is apparent by the inclusion of a reference to the commercial embodiment, First Mile Technologies from Indianapolis-based homebuilder Estridge Homes, of the Applicant's invention on Page 2 of *Hayes*, the Applicant's date of invention is clearly before the publication of *Hayes*.

As established by the enclosed Declaration, the inventors conceived of the inventions defined by claims 1-4, 8-12, 19-45, 47-56, 59, and 68-74 before September 2000. The Declaration and its exhibits establish substantially continuous efforts to prepare and file the present application from a time before the publication of *Hayes* through the filing date of May 9, 2001 for the present application. Such filing constitutes a constructive reduction to practice. The Declaration establishes the requisite conception and due diligence from a time prior to the effective date to the subsequent constructive reduction to practice that resulted from filing of the present application which supports each of the claimed features. It is respectfully submitted that *Hayes* has been overcome in accordance with 37 C.F.R. § 1.131.

In view of the foregoing remarks, it is respectfully submitted that the Applicant's application is in condition for allowance. Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alastair J. Warr', is written over a horizontal line.

Alastair J. Warr, Reg. No. 47,166

KRIEG DEVAULT LLP

One Indiana Square, Suite 2800

Indianapolis, IN 46204-2079

Telephone: (317) 238-6248

Facsimile: (317) 238-6345

Email: awarr@kdlegal.com